

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13898, of E. Allan Wendt, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition against allowing an addition to a structure which now exceeds the lot occupancy requirements (Paragraph 7107.21), the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7107.21) and the rear yard requirements (Sub-section 3304.1 and Paragraph 7107.22) for a proposed addition to a non-conforming structure in an R-3 District at premises 3234 Volta Place, N. W., (Square 1255, Lot 831).

HEARING DATE: January 19, 1983

DECISION DATE: February 2, 1983

FINDINGS OF FACT:

1. The subject property is located at the southeast corner of the intersection of Volta Place and 33rd Street, N. W. at premises known as 3234 Volta Place, N. W. It is in an R-3 District.

2. The subject site is rectangular in shape with sixty feet of frontage along Volta Place and 17.45 feet of frontage along 33rd Street. It is improved with a three-story brick structure constructed in approximately 1890. The upper two floors are residentially occupied with access from 3234 Volta Place. The first floor is occupied by an art gallery with access from the northwest corner of the structure known as 1331 33rd Street. There is no interior access between the gallery and the dwelling.

3. Abutting the subject property to the east is a two-story stucco structure with a gabled roof. Adjoining the subject structure to the south is a three story row dwelling.

4. The site has no alley access.

5. The site is in an extensive area of R-3 zoning. Commercial uses exist along Wisconsin Avenue in the D/C-2-A District located one block east of the subject property.

6. The applicant proposes to construct a one-story second floor addition measuring approximately eight feet by 15.5 feet on the remaining open portion of the lot on the east side of the structure. The addition will contain

kitchen facilities to serve the residential portion of the structure.

7. The space at the ground level below the addition and opposite a rear entrance to the gallery on the first floor would remain unenclosed. The area above the second floor addition will remain open. The space in which the addition is to be located is enclosed on three sides by two three-story and one two-story structures. Along Volta Place the space is presently enclosed by an existing masonry wall approximately eight feet high with a wooden door. The space measures approximately eight feet by 17.5 feet. The walls of the contiguous structures to the south and east have no windows facing the space. The north wall of the subject structure has windows on three floors, and a door at the ground floor.

8. The applicant testified that the addition was necessary so that the present kitchen, approximately ten feet by ten feet from wall to wall, could be turned into a dining room. The present structure does not have a dining room or area that could suitably be used for eating purposes. The second floor consists solely of the kitchen and a living room measuring approximately sixteen feet by thirty feet.

9. The applicant testified that the living room could not be used as a dining room because it is separated from the kitchen by a complex of hallways passing in front of a pantry, closet, and the two foot, eight inch wide main staircase leading up from the ground floor. Another staircase connects one of the hallways to the living room, which is on a higher level than the kitchen. A solid masonry wall further separates the kitchen and living room. This unique layout and design creates serious problems of internal access and inefficient space utilization.

10. The architect for the applicant testified that other solutions within the present configuration were examined. No other arrangement was found feasible. The current configuration of the structure could not be feasibly redesigned to accommodate a dining area because it would involve a complete structural alteration of the building including relocation of the staircase, which is economically prohibitive. The witness further testified that using one of the two bedrooms on the third floor as a dining area was also infeasible because of the very steep, narrow staircase connecting the second and third floors. The only feasible solution is the construction of the proposed addition in the space which was left as a residual when the building was originally constructed on the lot. The space currently serves no useful purpose. It provides no necessary ventilation or light either to the subject property or adjacent properties. It does not drain properly and its small size in relation to the massive masonry facades around it make it

seem like a dungeon from the inside. It thus can not serve either as a useful outdoor patio or yard.

11. Construction of a kitchen in the space would permit the present kitchen to be converted into a dining room and would render the property suitable for family living for present and possible future occupants. The construction results in a dwelling more in keeping with the character of the neighborhood and surrounding community. Moreover, should a future occupant wish to convert the gallery space to residential use if it became vacant, it could be used as a den or playroom without necessitating major restructuring and reconfiguration of the property.

12. The proposed addition is architecturally designed to be compatible with the adjoining two-story stucco structure along Volta Place. It will have a stucco and gabled roof finish. In addition, approximately eight feet of the existing masonry wall at grade will be refinished. An existing magnolia tree in front of the subject space will be preserved.

13. The applicant purchased the subject property in 1975. He has been out of the country for two years and has been living at the subject premises for approximately the past year. The applicant will continue to reside on the premises.

14. Pursuant to BZA Order No. 7533, dated January 6, 1964, the first floor has been occupied as an art gallery. It was leased to the Volta Place Gallery, Inc. in October, 1979. The present lease will expire in November, 1983. The lease has an option to renew.

15. The R-3 District requires a minimum lot area of 2,000 square feet, and 1,947 square feet is provided.

16. A minimum lot width of twenty feet is required in the R-3 District, and 17.45 feet is provided.

17. A lot occupancy of sixty percent or 628.2 square feet is required and 1,047 square feet is provided, requiring a variance of 66.66 per cent or 418.8 square feet from the lot occupancy requirements.

18. The R-3 District also requires a rear yard of twenty feet. No rear yard is provided, requiring a variance of twenty feet or 100 per cent.

19. The subject lot and structure are presently non-conforming as to lot area, lot width, lot occupancy and rear yard in the R-3 District.

20. The principal use of the structure is as a one-family dwelling with authority to use the ground floor as an art gallery.

21. A petition stating no objection to the application was entered into the record with the signatures of approximately twenty-seven residents in the neighborhood. The petition stated that the signers thereof had reviewed the plans and the accompanying perspective.

22. The architect who designed the Volta Place town-houses known as 3216 thru 3230 Volta Place and as part owner of 3222 Volta Place raised no objection to the application on the grounds that the addition fits well with the character, scale and architecture of Volta Place between Wisconsin Avenue and 33rd Street.

23. Letters in support of the application were received into the record from the owners of contiguous properties at 3232 Volta Place and 1529 33rd Place. The owner of the latter property and the owner of 1525 33rd Street also testified at the public hearing. The grounds for supporting the addition were that the existing space is a nuisance in collecting vermin and debris and, with its availability from the street, created a security problem to adjoining properties and was a hiding place for muggers.

24. The Citizens Association of the Georgetown, by letter dated January 19, 1983, and at the public hearing, opposed the application. The CAG argued that a one family dwelling is by definition a dwelling used exclusively as a residence for one family. The subject structure containing a gallery and a dwelling must be considered as a commercial establishment and an apartment. As such both uses are non-conforming in an R-3 District. The CAG further argued that the application should be considered by the Board as an addition to a non-conforming structure containing a non-conforming use. The Association asserted that Sub-section 7107.1 of the Zoning Regulations specifically states that, "no structure devoted to a non-conforming use may be enlarged." The Association believed that Sub-section 7107.1 of the Zoning Regulations applies to this case, even if the applicant only wants to expand the residential portion of the structure. Under the present Zoning Regulations, the non-conforming controls apply to the entire structure even if part of the structure is used in a conforming manner. This view is consistent with the Court of Appeals finding in Lenkin v. D.C. Board of Zoning Adjustment where the Court observed that "in ascertaining the plain meaning of Section 7107.1 the Board of Zoning Adjustment could reasonably conclude that the focus of the prohibition is on the enlargement of structures containing non-conforming uses." The Association was of the view that the application is not an area variance as advertised.

25. The facts in the subject case are significantly different from the facts in the Lenkin Case in one major respect. In the Lenkin case, the entire building was devoted to a non-conforming use. No portion of the building was used for conforming R-3 purposes. In the subject building, only a portion of the building, the first floor, is devoted to a non-conforming use. The second and third floors comprise a single family unit, a conforming use in an R-3 District.

26. As to the issues raised by the CAG, the use of the second and third floors together comprises a single family dwelling unit, a use permitted as a matter-of-right in an R-3 District. By definition, the dwelling is not an apartment house, a multiple dwelling or a flat. The applicant proposes expansion of the conforming dwelling use. For reasons set forth in the Conclusions of Law, the proper relief has been requested, and the Lenkin case does not control.

27. Advisory Neighborhood Commission 3A made no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking variances to expand a portion of a non-conforming structure devoted to a conforming use. Aside from the non-conforming art gallery use on the first floor, which is not effected in any way by this application, there is only one dwelling unit on this property. Consequently, the dwelling use is a permitted use in an R-3 District. No expansion of the portion of the structure now devoted to the non-conforming use is proposed. Consequently, no variance from Sub-section 7107.1 is required. The Lenkin case is distinguished from the subject case, and is not controlling because the subject building is presently not devoted to non-conforming use on the second and third floors.

The Board therefore concludes that the applicant is seeking only area variances, the granting of which requires the showing of a practical difficulty inherent in the property itself. The Board concludes that there are practical difficulties unique to the subject property. The subject structure was built prior to the adoption of the May 12, 1958 Zoning Regulations. The existing non-conforming structure exceeds the sixty percent lot occupancy of the R-3 District by 44.44 per cent or 279.2 square feet. The proposed addition of 139.6 square feet will increase the non-conformity to 66.66 per cent or 418.8 square feet. The addition is a small addition and would modestly increase the structures non-conformance. The addition will provide

needed interior space to the residential portion of the structure. It is impractical for the applicant to renovate the existing structure without extensive structural work and cost to provide space for dining. The space in question is surrounded on two sides by three-story high walls and on the third side by a two-story wall. It is a dungeon-like space and it can not be expected to be used or enjoyed as a yard or other outdoor space.


The Board further concludes that the requested relief can be granted without causing substantial detriment to the public good. The addition will not have an adverse effect on adjacent properties regarding light and air. It will eliminate a nuisance which has attracted debris and vermin and has been a security problem in the neighborhood. The design of the addition will architecturally be compatible with adjacent structures and will enhance the general appearance of structures along the 3200 block of Volta Place, N.W.

The Board is further of the opinion that the relief can be granted without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is hereby GRANTED.

VOTE: 3-1 (Carrie L. Thornhill, John G. Parsons, Douglas J. Patton to GRANT; William F. McIntosh OPPOSED to the Motion; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: JUN 14 1983

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF LICENSES, INVESTIGATIONS AND INSPECTIONS.

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